

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JOE T. PORTUGAL,

Complainant,

vs.

STATE – CORRECTIONS,

Respondent.

CASE 22664-U-09-5794

DECISION 10543 - PSRA

ORDER OF DISMISSAL

On August 25, 2009, Joe T. Portugal (Portugal) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Corrections (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on August 28, 2009, indicated that it was not possible to conclude that a cause of action existed at that time. Portugal was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

On September 15, 2009, Portugal filed a request that the complaint be “dismissed without prejudice at this time rather than dismissed.” The Commission does not dismiss cases without prejudice. Portugal has not filed an amended complaint. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a), domination or assistance of a union in violation of RCW

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At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

41.80.110(1)(b), discrimination in violation of RCW 41.80.110(1)(c), and unspecified “other” violations, by its actions toward Portugal.

The deficiency notice pointed out the defects to the complaint. One, the statement of facts requests intervention by the National Labor Relations Board (NLRB). The NLRB is a federal agency with jurisdiction over private sector labor relations. The Public Employment Relations Commission is an agency of the State of Washington with jurisdiction over public sector labor relations in the state. The Commission would have jurisdiction in this case. Unlike the National Labor Relations Board, the Commission does not investigate facts which are alleged in a complaint to determine if any collective bargaining statute has been violated. The complainant is responsible for presentation of evidence supporting its complaint at a hearing before an examiner in accord with WAC 391-45-270.

Two, WAC 391-45-050 governs the contents of unfair labor practice complaints and requires a statement of facts to be set forth in numbered paragraphs. WAC 391-45-050(2) requires a complaint to contain a clear and concise statement of the facts constituting the alleged unfair labor practice, including times, dates, places and participants in occurrences. Related to this, RCW 41.80.120(1) requires an unfair labor practice complaint to be filed within six months of the alleged violation in order to obtain remedial relief. The statement of facts does not have numbered paragraphs and does not specify the times and dates of the alleged violations.

Three, it is an unfair labor practice in violation of RCW 41.80.110(1)(a) and (c) for an employer to interfere with employee rights and discriminate against employees in reprisal for union activities protected under Chapter 41.80 RCW. Filing a union grievance is a protected activity. However, the statement of facts does not give sufficient information regarding Portugal’s union grievance and, as previously noted, does not provide specific information regarding times and dates of occurrences. Thus, the complaint does not provide facts sufficient to indicate that a cause of action could be found.

Four, although it is an unfair labor practice in violation of RCW 41.80.110(1)(b) for an employer to dominate or assist a union, the none of the facts alleged in the complaint suggest that the employer has involved itself in the internal affairs or finances of the union, or that the employer has attempted to create, fund, or control a company union.

Five, the remedy request concerns reopening Portugal’s grievance and enforcing the agreement with the employer concerning his trial period. Only the trial period issue is related to the claim

against the employer. Portugal has alleged employer interference, discrimination, and domination or assistance of a union; however, his remedy request asks for specific performance of the agreement concerning the trial period. This remedy is based upon a contractual agreement and must be enforced through the court system. The Commission has jurisdiction to resolve collective bargaining disputes, but does not assert jurisdiction over disputes related to the interpretation of collective bargaining agreements or other contractual agreements between parties.

Six, the statement of facts does not identify the nature of "other" violations or specify a statute.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in Case 22664-U-09-5794 is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 22nd day of September, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, Unfair Labor Practice Manager

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.